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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,071	08/04/2003	Rebecca Lyn Dilnik	18,128	5244

23556 7590 08/09/2005

KIMBERLY-CLARK WORLDWIDE, INC.  
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NEENAH, WI 54956

EXAMINER
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MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/634,071

Applicant(s)

DILNIK ET AL.

Examiner

Michael C. Miggins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.  
4a) Of the above claim(s) 28-49 and 69-83 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-27, 50-68, 84 and 85 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/9/05, 5/26/05  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 1-27 and 50-68 in the reply filed on 5/24/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### **REJECTIONS WITHDRAWN**

2. The 35 USC 112 2<sup>nd</sup> paragraph rejections set forth in the non-final rejection of 2/25/05, pages 4-5, paragraphs 10-11 have been withdrawn.

### **REJECTIONS REPEATED**

3. All of the 35 USC 103(a) rejections set forth in the non-final rejection of 2/25/05, pages 5-8, paragraphs 12-15 are repeated for the reasons of record.

### **NEW REJECTIONS**

#### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 84 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (WO 95/00116) or JP 10192188 (abstract) in view of Moerhle (US 4108180).

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Claim 84 is rejected for the same reasons as claims 1-27 were in the non-final rejection of 2/25/05, pages 5-7, paragraphs 12-14.

5. Claim 85 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (WO 95/00116) in view of JP 06344479 A.

Claim 85 is rejected for the same reasons as claims 50-68 were in the non-final rejection of 2/25/05, pages 7-8, paragraph 15.

### **ANSWERS TO APPLICANT'S ARGUMENTS**

6. Applicant's arguments filed 2/25/05 have been carefully considered but are deemed unpersuasive. The 112 2<sup>nd</sup> paragraph rejection has been withdrawn.

Applicant's summary of the instant invention, current rejections and legal precedent provided in the response of 5/24/05, pages 1-3 of the Remarks section is acknowledged.

Applicant has argued that Moehrle '180 do not teach a bag. However, Moehrle clearly state a bag (see abstract). Moehrle also teaches that layer 18 forms a bag (column 2, lines 55-60).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

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*Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine comes from the desirability of providing convenient mesh bags as disclosed in *Moehrl* (column 2, line 35 and column 4, lines 27-32).

Applicant has argued that the examiner points to a feature but does not point to language that would lead one of ordinary skill in the art to modify. However, the examiner pointed to the text of column 2, line 35 and column 4, lines 27-32. Furthermore, the feature can be the motivation in and of itself as well as drawings, motivation can come from anywhere in the disclosure not just the text.

Applicant has argued that the dependent claims from claim 1 are also patentable. However, the dependent claims depend from claim 1 and since claim 1 is not patentable the dependent claims are not patentable either.

Applicant has argued that the examiner has failed to make a proper combination of *Gordon* in view of JP 06344479 since motivation is lacking. However, the motivation to combine is to make a wrinkled product which is textually appealing to a consumer. Increasing sales to consumers is always a very strong motivation.

Applicant has argued that the dependent claims from claim 50 are also patentable. However, the dependent claims depend from claim 50 and since claim 50 is not patentable the dependent claims are not patentable either.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

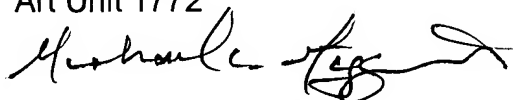
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins  
Primary Examiner  
Art Unit 1772

A handwritten signature in black ink, appearing to read "Michael C. Miggins", with a stylized flourish at the end.

MCM  
August 5, 2005